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Supreme Court of the United States.

OCTOBER TERM, 1906.
No. 167.

THE UNITED STATES,
Petitioner,

vs.

GEORGE RIGGS & CO.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENTS.

W. WICKHAM SMITH,
JOHN K. MAXWELL,
Attorneys for Respondents.

W. WICKHAM SMITH,
Counsel.

EVENING POST JOB PRINTING OFFICE, NEW YORK.

Supreme Court of the United States,

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THE UNITED STATES, Petitioner, vs. GEORGE RIGGS & Co., Respondents.	No. 167.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Brief for the Respondents.

In the case of Arthur *vs.* Morrison (96 U. S., 108), this Court said:

> "Importations from foreign countries are necessarily made with reference to the duties to be paid upon their entry into the ports of this country. If these are not reasonably uniform, and cannot be ascertained, the transaction of business will be impossible. No man can determine whether his venture will enrich him, or make him a bankrupt."

The respondents in this case imported cotton cloths which contained threads other than the ordinary warp and filling threads introduced

in the process of weaving for the purpose of forming a figure. In modern commerce, goods are frequently manufactured in Europe in accordance with orders accepted and contracts for delivery made in this country before the goods were manufactured; so that, in many instances at the time of taking contracts for goods to be manufactured and imported, and in every instance at least at the time of importation and entry, the importer has to know under what dutiable category his goods will fall. When the importers examined the Tariff Act in force at the time of the importations and for a number of years theretofore, they found the goods that they imported provided for in paragraph 313, and they look to that in the first instance to find what is the duty on their goods. From that paragraph they learn that all goods of this character pay a duty of one or two cents per square yard (according to whether they are valued at 7 cents a square yard or more) in addition to the duty provided in the cotton schedule for other cotton cloth of the same description, or condition, *weight* and count of threads to the square inch. They knew that all their goods were valued at more than 7 cents per square yard, and therefore the additional duty provided for their goods in paragraph 313 was two cents per square yard. They knew the description or condition of their goods, viz., that some of them were bleached and some of them were colored. They knew the weight, and they knew that some of the bleached goods contained between 150 and 200 threads to the square inch, and that all the others contained between 100 and 150 threads to the square inch. In paragraph 306 they found certain specific duties provided for bleached cottons containing between 100 and 150 threads to the square inch, according to their weight, and certain specific duties provided for colored cottons within the same range of count, according to their weight, and in paragraph 307 specific duties for bleached cottons containing between 150 and 200

threads to the square inch, according to their weight. They now had all the data upon which to compute the duty on their goods. They had the ad valorem rate of two cents provided by paragraph 313, and the foundation rates provided by paragraphs 306 and 307 for goods of the same description or condition, *weight* and count of threads to the square inch. Taking the specific duties found in paragraphs 306 and 307, and adding to them two cents, as required by paragraph 313, they had the duty fixed by law upon their goods, on which they had a right to rely in contracting for them, and in entering and selling them, and when the Collector ascertained the same things he had all the basis necessary for assessing duty upon the goods, as the Circuit Court and the Circuit Court of Appeals have both decided.

But it is now suggested that when the importers had found in paragraphs 306 and 307 the specific duties provided for bleached and colored cottons of certain count and weight, they should not have been satisfied with stopping there, but they should have gone on and examined certain provisos to those paragraphs which, in effect, provide for ad valorem instead of specific duties on goods valued at more than certain prices therein specified, *without regard to their weight*, and that the Collector was justified in going to these provisos, taking the ad valorem duties he found there, ignoring the specific duties found in the body of the paragraph, and adding two cents to the ad valorem rates of 30 and 35 per cent. provided for in the respective paragraphs. Why should either the importers or the Collector assume that these provisos had anything to do with the assessment of duties on goods covered by paragraph 313? That paragraph itself contains an ad valorem standard, and divides goods into two classes according as they are or are not worth seven cents per square yard. Why should either the importers or the Collector suppose that another ad valorem scheme contained in the provisos of para-

graphs 306 and 307 was to be applied to these goods? There is certainly nothing in paragraph 313 that says so. It seems that the goods there provided for are subject to the ad valorem rates of one and two cents in addition to "the duty herein provided for other cotton cloth of the same description or condition, *weight* and count of threads to the square inch." If it meant what the Attorney General contends it does mean, it would have contained the word "value," and would have read:

> "Other cotton cloth of the same description or condition, weight, *value* and count of threads to the square inch."

It does not say so, and it is pure assumption to say that it means so. The Board of General Appraisers suggested that the words "description or condition" were broad enough to include value, but as Judge Townsend pointed out in his decision in the Circuit Court, they are also broad enough to include weight and count; and when Congress used the words "weight and count" in addition to the words "description or condition," it is evident that they were using the words "description or condition" not in a broad, but in a narrow and restricted sense, intending them to be applied only to the description or condition of the goods, as unbleached, bleached, colored, dyed, painted, or printed.

The contention of the Attorney General is that where in certain paragraphs Congress had provided in the body of the paragraph for goods according to their description or condition, count and *weight*, and in the provisos to such paragraphs fixed a duty according to their value (*and independent of their weight*), and had in paragraph 313 fixed an additional duty according to value, to be added to the duties provided according to description or condition, *weight* and count, all the specific duties provided for the goods according to their description or condition, *weight* and count should be absolutely

ignored for the purpose of adding the two cents to an ad valorem duty only. If the Government's position is correct, neither the importer nor the Collector need have troubled himself about the weight of the goods at all, if he knew that the bleached goods were worth over 11 cents a square yard, or the colored goods were worth over 12 1/2 cents a square yard, because in that case the duty on them was 35 per centum ad valorem, utterly irrespective of their weight. But paragraph 313 expressly mentions their weight. Upon what theory has the Collector a right to disregard one of the qualifications mentioned in paragraph 313 and consider another qualification which is not mentioned in it.

There can be no question that the claim of the importer and the decisions of both the Circuit Court and the Circuit Court of Appeals are based on the plain and unambiguous language of the statute, and that the claim of the Collector and the argument of the Attorney-General are in plain opposition to the language of the statute, and it now only remains to consider the reasons assigned by the Attorney-General for asking this Court to disregard the plain wording of paragraph 313 to put into it the word "value" by judicial legislation.

One of the reasons assigned for this is that Congress intended to "impose an additional burden upon figured goods because of the great labor essential to their manufacture," and "to prescribe higher rates as values increase, through fineness, bleaching, coloring, &c."

The answer to this is that in the first place the language used by Congress being plain and unambiguous, this Court is concerned, not with what it intended to do, but with what it did, the searching for intent being proper only in cases of obscure ambiguous provisions. And the answer in the second place, is that nobody is disputing that Congress not only intended to, but did, in fact, increase duties according to fineness, bleaching, coloring, &c. The

specific rates on goods increase as the number of threads increase. The specific duties on bleached goods are higher than the specific duties on unbleached goods, and the specific duties on colored goods are higher than either. There is nothing in the importers' contention here that prevents the assessment of increasing duties in accordance with the increasing fineness or bleaching or coloring of goods. The only question at issue is whether Congress intended in paragraphs 305 to 309 to set up an ad valorem standard for cotton cloths that did not belong in paragraph 313, and in paragraph 313 to set up an ad valorem standard for the goods that did come within that paragraph. And the answer to the question whether they intended to do it is that they, in fact, did do it. Paragraph 313 has an ad valorem standard of its own, and having determined the additional duty according to that ad valorem standard, the additional duty is to be added to the specific rates provided in the preceding paragraphs based on description or condition, *weight* and count.

There is much in the brief of the Attorney-General about the protective policy of the Government, but, as this Court said in the case of Hadden *vs.* The Collector (5 Wall., 107):

> "What is termed the policy of the Government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes."

The same idea was expressed by Judge Shipman, *In re* H. B. Claflin Co. (52 Fed. Rep., 121), where he said:

> "It is argued that it is unreasonable to suppose that Congress intended to impose a

> higher duty upon cotton handkerchiefs having a plain, cheap hem than upon those which were prevented from raveling in a more ornamental and expensive manner. It is true that the construction makes apparent a lack of symmetry in the rates of duty, but the Court cannot attempt to adjust into symmetry the various provisions of a statute which must include many details, by creating exceptions to a well settled, and, on the whole, satisfactory, rule of interpretation of the statute relating to the revenue from imports."

If Congress supposed that by the enactment of paragraph 313 they would be imposing upon the whole range of ornamented cotton cloths duties higher than those imposed on plain cloths and were mistaken in their assumption, *i. e.*, if the plain and unambiguous language they used did not accomplish a supposed legislative intent, the remedy is to be sought by those aggrieved, whether tax collectors or manufacturers, in remedial legislation by Congress, and not in judicial legislation by this Court.

Reference is made in the brief of Attorney-General to certain illustrative samples which were received by the Board of General Appraisers. Examination of the record will disclose (fols. 19, 20, 26), that these samples were received upon objection of the importers; that they were not in any way authenticated; that the witness who produced them declined to state when or by whom they were imported; that a motion was made to strike them from the record, which was denied. The Circuit Court very properly refused to attach any weight to them, or base any construction of the statute upon them.

The case of Bensusan *v.* Murphy, involving a question similar to that at issue here, was a well-considered decision entitled to weight in this court, not only from the eminence of the learned Judge by

whom it was decided, but by reason of its sound logic and correct conclusion, notwithstanding the Assistant Attorney-General suggests that it was an erroneous decision.

At the bottom of page 17 and top of page 18 of his brief, under Point IV., the learned Assistant Attorney-General suggests that unless the ad valorem provisions of the countable clauses apply to the goods which contain between 100 and 150 threads to the square inch, two cents is a maximum which can be collected on any figured cotton cloth. Of course this is not the case. The duty of two cents is always the duty additional to something else, and paragraph 306 contains a scale of specific duties to which the two cents is to be added. It is not the contention of the respondents that there is any cotton cloth which is subject to a duty of two cents and nothing else.

This case, it is respectfully submitted, should be disposed of in accordance with two well-settled principles of law:

1. Where the language of a statute is plain and unambiguous, it is the duty of the Court to enforce it according to the obvious meaning of the words without attempting to change it by adopting a different construction based upon some supposed policy of Congress in regard to the subject of legislation.

Bate Refrigerating Co. *vs.* Sulzberger, 157 U. S., 1.

2. If there be any doubt at all as to the construction of the statute (and we submit there is not), that doubt cannot be resolved in favor of the imposition of a higher tax.

U. S. *v.* Wigglesworth. 2 Story, 369.
Rice *vs.* U. S., 53 Fed. Rep., 910.
Hartranft *vs.* Wiegmann, 121 U. S., 609.

Matheson *vs.* U. S., 71 Fed. Rep., 894.
U. S. *vs.* Davis, 54 Fed. Rep., 147.
Adams *vs.* Bancroft, 3 Sum., 884.
McCoy *vs.* Hedden, 38 Fed. Rep., 89.

The judgment of the Circuit Court of Appeals should be affirmed.

Dated New York, October 17, 1906.

W. WICKHAM SMITH,
JOHN K. MAXWELL,
Attorneys for Respondents.

W. WICKHAM SMITH,
Counsel.